

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 889 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NATHUBHAI DANABHAI MUCHADIA

Versus

STATE OF GUJARAT

Appearance:

MR ZUBIN F BHARDA for Petitioner

MS GAJJAR APP for Respondent No. 1

NOTICE SERVED for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

Under the order dated 4th June, 1998, made by the Deputy Commissioner of Police, Rajkot City, the petitioner has been ordered to be externed for a period of two years from the limits of Rajkot city, Rajkot

(Rural) and Surendranagar. The order has been confirmed in appeal by the Government on 6th August, 1998. Feeling aggrieved, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

On 31st January, 1998, the Assistant Commissioner of Police, Rajkot City issued a notice upon the petitioner to show cause why, for the reasons recorded therein, under the powers conferred under section 56-A of the Bombay Police Act, 1961, the petitioner should not be ordered to be externed from Rajkot City, Rajkot (Rural) and Surendranagar, Junagadh and Jamnagar Districts for a period of two years. The said show cause notice describes the petitioner as a 'bully'. It is alleged that the petitioner in the company of his associates is indulging into anti-social activities and bullying the innocent residents and take away their valuable property under the threat of killing them, encroaches upon the vacant plot of land and extorts money. Three offences are registered against the petitioner and in each of the said three cases, the matter is pending trial before the concerned court. In spite of his repeated arrest and release on bail, he has continued his nefarious activities. The said show cause notice also refers to the statements made by four witnesses whose identity and other particulars have been withheld. The said show cause notice was replied to by the petitioner and he had examined six witnesses in his defence.

Mr. Bharda, the learned advocate appearing for the petitioner has contended that the the impugned order of externment is vitiated as the Externing Authority has failed to apply its mind. The petitioner was sought to be externed not only from the place of his residence, and area of his activities, but also from the contiguous Districts of Surendranagar, Jamnagar and Junagadh. Besides, the incidents referred to by the witnesses are vague in as much as the same do not disclose the place of occurrence of the said incidents. The petitioner is thus deprived of making an effective representation before the Externing Authority. Further, the Externing Authority has not taken into consideration the defence pleaded by the petitioner. Thus, while making the order of externment, the Externing Authority has failed to rely upon all the relevant materials before it. The only reference to the said witnesses is found in the order of the appellate authority. In support of his contentions, he has relied upon the judgment of the Supreme Court in the matter of NAWABKHAN ABBASKHAN VS STATE OF GUJARAT (AIR, 1974, SC, 1471); and of this court in the matters

of HUSSAINMIYA ALIAS JAGO ROHIDASPARA, (Special Criminal Application No. 944/98, decided on 9th February, 1999 (Coram : Mr.Justice D.C.Shrivastav); HARIJAN GOVIND JADAV VS STATE OF GUJARAT & ORS (1987 {1} GLR, 216); MUSTUFAMIYA PIRSAHEDMIYA SAIYED (1999 {1} GLH, 913)

The petition is contested by the learned APP Ms. Gajjar. She has submitted that the externment order as well as the appellate order are administrative orders and no reasons are required to be recorded by the concerned authority. In support of her argument, she has relied upon the judgment of this court in the matter of RAZAKBHAI ABDULBHAI GHANCHI VS STATE OF GUJARAT (1994 {2} GLR, 1063).

In the matter of Nawabkhan Abbaskhan (supra), the Hon'ble Supreme Court found that the Externing Authority had relied upon the statements of the witnesses who were the victims of the nefarious activities of the externee. The court, in the said judgment, observed that - " It is a mandatory requirement of Section 56 that the externing authority must form a subjective opinion that witnesses are not willing to come forward to give evidence in public against the person sought to be externed by reason of apprehension on their part as regards the safety of their person or property. This requirement is clearly not satisfied in the present case . It is clear that the opinion formed by the Deputy Commissioner of Police is only with regard to the witnesses who are victims of the said incidents and not as regards the other witnesses. This opinion would clearly not be the requisite opinion contemplated by the mandatory requirement of section 56 ". In the matter of M.P.Saiyed (supra), the court held that non application of mind in the show cause notice was exposed when the Externing Authority had mentioned that the petitioner should be externed from the District of Ahmedabad City, Ahmedabad (Rural) Gandhinagar, Kheda and Vadodara. No reasons had been given in the show cause notice why externment from the contiguous districts was proposed when the activities of the said petitioner were confined to the district of Ahmedabad Rural. In the matter of Razak Abdul (supra), the Division Bench of this court has considered whether the appellate authority had power, while setting aside the order of externment, to impose any condition of furnishing of bond or to impose any condition to direct the externee to conduct himself in a manner to be directed by the appellate authority, and if the appellate authority were held to have power to vary i.e. to alter or to modify the order of externment passed by the competent authority, on the facts of the case, the appellate authority should have imposed the

condition in question without recording reasons and without affording an opportunity to the externee. The Division Bench has held that "the power to order externment as well as the appellate power are administrative in nature and no reasons are required to be recorded either for making the order of externment or for confirming the same in the appeal, neither was the externee required to be heard while varying the order of externment.

From the perusal of the show cause notice, it is apparent that the petitioner was proposed to be externed not only from the area of his activity i.e. Rajkot City but from the entire District of Rajkot and the contiguous districts of Surendranagar, Jamnagar and Junagadh. The said show cause notice does not disclose why the petitioner was required to be externed not only from the area of his activity, but from other adjoining areas also. Further the witnesses referred to in the said show cause notice are all victims of the activities of the petitioner and no other witness has been examined by the Externing Authority. Besides, the said statements do not disclose the place of the respective incident. Though the witnesses have disclosed the dates of the occurrence of the incidents, the statements are silent in respect of the area in which the alleged incident occurred. Further, it is undisputed that the petitioner had examined six witnesses in support of his defence. However, the Externing Authority has not taken into consideration the statements of the said witnesses. The order of externment does not even cursorily refer to the witnesses examined by the petitioner. It does not state whether the said statements are considered or not, and whether they are believed or not. The order of externment is absolutely silent about the witnesses examined by the petitioner. If the principles laid down in the above referred judgments relied upon by Mr. Bharda are to be applied to the facts of the present case, it must be held that the show cause notice issued by the competent authority is vitiated for the competent authority has failed to examine the independent witnesses other than the victims of the activities of the petitioner, has failed to recite the reasons why the petitioner should be externed not only from the area of his activities but also from the adjoining area. Besides, the details of the area in which the alleged incidents, narrated by the witnesses, occurred have not been disclosed in the show cause notice. Further, even the order of externment would be vitiated for non application of mind in as much as the Externing Authority has failed to take into consideration all the relevant

materials which were before him i.e. the Externment Authority has failed to consider the statements made by the witnesses examined by the petitioner in his defence. On the facts of the present case, the judgment of this court in the case of Razak Abdul (supra) shall have no applicability.

For the above referred reasons, the petition is allowed. The impugned show cause notice dated 31st January, 1998 (Annexure-B), the impugned order of externment dated 4th June, 1998 (Annexure-A) and the appellate order dated 6th August, 1998 (Annexure-C) are quashed and set aside. Rule is made absolute.

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JOSHI